

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

ROGELIO ALBERT PENA,	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 3:18-CV-0522-D
vs.	§	
	§	
CELEBRITIES UNLIMITED, INC.,	§	
Defendant.	§	

**DEFENDANT CELEBRITIES UNLIMITED, INC.'S**  
**RULE 26(A)(3) PRETRIAL DISCLOSURES**

Defendant Celebrities Unlimited, Inc. ("Defendant"), provides the following Rule 26(a)(3) Pretrial Disclosures.

**Rule 26(a)(3)(i) Live Witnesses**

Defendant expects to call the following witnesses in its case in defense:

Mark Phillips, owner/shareholder of Defendant Celebrities Unlimited, Inc., also known as Field of Dreams (a sports souvenir giftshop), 13350 Dallas Pkwy, Dallas, TX 75240, phone number 972-934-9688. Defendant expects to call this witness.

Rogelio Albert Pena, Plaintiff, herein. Defendant does not have Mr. Pena's address or telephone number. Defendant expects to call this witness.

Stephen Andrew Kennedy, 1445 Ross Avenue, Suite 2750, Dallas, TX, 75201, phone number 214-716-4340. Defendant may call this witness to respond to testimony on reasonable attorney's fees.

**Rule 26(a)(3)(ii) Witnesses by Deposition**

Defendant does not expect to call any witnesses by deposition.

**Rule 26(a)(3)(iii) Exhibits**

Defendant expects that it will seek admission into evidence the following documents:

The May 15, 2016 Mobile Payment to Walter A. Kowalczyk, attached as Exhibit DX-1, as evidence of an online payment by Defendant for a license to use a photo of Texas Ranger professional baseball player Rougned Odor punching Toronto Blue Jay player Jose Bautista during a baseball game on that same day (Kowalczyk claimed to own the rights to the photo and was offering the license for a fee).

The press release dated June 15, 2016 by Getty Images entitled “Statement regarding legal action taken against Mr. Walter A. Kowalczyk,” attached as Exhibit DX-2, explaining that Kowalczyk had improperly downloaded thousands of rights-protected images and resold the images to third parties who reasonably believed Kowalczyk was the licensor of the images.

Invoice dated May 25, 2019, attached as Exhibit DX-3, disclosing cost information for generating framed Odor photos licensed from Kowalczyk.

Invoice dated June 10, 2016, attached as Exhibit DX-4, disclosing cost information for generating framed Odor photos licensed from Kowalczyk.

Summary of sales, cost and profit information attached as Exhibit DX-5.

The following documents may be used at trial if needed:

Email dated April 2, 2018 from Stephen A. Kennedy to counsel for Plaintiff with offer of judgment, attached as Exhibit DX-6.

Invoices for attorney’s fees incurred by Defendant, if needed, shall be submitted pursuant to Fed. R. Civ. P. 54(d)(2) after entry of judgment.

Respectfully submitted,

/s/ Stephen A. Kennedy  
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COUNSEL FOR DEFENDANT

**CERTIFICATE OF SERVICE**

This Answer was served on all counsel of record through the ECF system for the Northern District of Texas federal courts on the date of filing, January 3, 2020.

/s/ Stephen A. Kennedy  
Stephen A. Kennedy